

JAN 9 2003

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER
DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: Debarment and Suspension-Order Placement and Option
Exercise

Attached are comments received on the subject FAR case published at 67 FR 67282;
November 4, 2002.

| <u>Response Number</u> | <u>Date Received</u> | <u>Comment Date</u> | <u>Commenter</u> |
|----------------------------|--------------------------|-------------------------|------------------|
| 2002-010-1 | 12/13/02 | 12/13/02 | GSA/OIG |
| 2002-010-2 | 01/05/03 | 01/05/03 | Lena Bowie(FCOC) |

Attachments



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

2002-010-1

December 13, 2002

FAR Secretariat (MVA)
General Services Administration
1800 F Street, NW
Room 4035
Washington, DC 20405
Attn: Laurie Duarte

Re: FAR Case 2002-010 – Debarment and Suspension – Order
Placement and Option Exercise

Dear Sir or Madam:

This letter transmits the comments of the General Services Administration (GSA) Office of Inspector General (OIG) on the above-captioned proposed rule. The proposed rule would prohibit the placement of orders by agencies under indefinite delivery indefinite quantity (IDIQ) contracting vehicles with those vendors who have been suspended, debarred, or proposed for debarment, unless the agency head determines in writing that compelling reasons exist to do so. Most significantly for our agency, the proposed rule would specifically prohibit the placement of any orders with such vendors under Multiple Award Schedule (MAS) contracts and multiple award contracts (MACs).

We strongly favor the proposed rule, and believe it is consistent with the Government's philosophy of only doing business with presently responsible vendors. We believe the rule will make the impact of the suspension/debarment sanction more effective as to MAS and MAC contracts, and will bring such suspensions/debarments in line with the current treatment of non-IDIQ contracts. We note that DOD, through the Defense Federal Acquisition Regulation, currently has a similar rule.

If an agency finds that a contractor is not presently responsible, and that suspension or debarment is an appropriate remedy, in our view it is eminently reasonable to extend the remedy's effect to orders under an extant MAS or MAC contract. Agencies are subjected to the same degree and type of risk when they do business with a debarred vendor under a significant task or delivery order as they are when they enter into a contract with such a vendor. We feel that the type of contracting vehicle should not be determinative of the impact of the suspension/debarment sanction.

1800 F Street, NW, Washington, DC 20405-0002

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2002-010-1

Please feel free to call my counsel, Kathleen S. Tighe, on (202) 501-1932 with any questions you have regarding these comments.

Sincerely yours,

A handwritten signature in black ink that reads "Daniel R. Levinson". The signature is written in a cursive style with a large, stylized 'D' and 'L'.

Daniel R. Levinson
Inspector General

2002-010-2



Laurie A. Duarte

01/05/2003 10:30 PM

To: LaRhonda M. Erby-Spriggs/MVA/CO/GSA/GOV@GSA
cc:
Subject: Federal Register Notice-FAR Debarment and Suspension, FAR Case 2002-010

LaRhonda,

Please log and transmit the comment below for FAR case 2002-010.

Thanks.

May your day be well,

Laurie A. Duarte
Supervisor
Regulatory Secretariat
Office of Acquisition Policy
General Services Administration
202-501-4225

----- Forwarded by Laurie A. Duarte/MVA/CO/GSA/GOV on 01/05/2003 10:33 PM -----



Lena Y. Bowie

01/02/2003 06:09 PM

To: Ralph J. DeStefano/MVP/CO/GSA/GOV@GSA, Laurie A. Duarte/MVA/CO/GSA/GOV@GS
cc: Lisa D. Maguire/FCO/CO/GSA/GOV@GSA
Subject: Federal Register Notice-FAR Debarment and Suspension, FAR Case 2002-010

To: Office of Acquisition, Policy Division, MVA
From: Acquisition Management Center, Commercial Acquisition, FCOC
Topic: Federal Register Notice-FAR Debarment and Suspension, FAR Case 2002-010, Comments Due on or before January 3, 2003.

Laurie,

The Acquisition Management Center submits the following comments on subject FAR Case:

1. The proposed guidance specifically references orders against indefinite-quantity contracts and optional use FSS schedule contracts. It is not clear if this also includes orders placed against established BPAs or credit card purchases.
2. Does this proposed guidance apply to MOUs? 6FE assumes that adding new work is referring to modifications and not entering into a new contract/agreement since this is under the continuation of current contracts. What about MIPRs and GWACS? Are they also included? Recommend clarification in the above mentioned areas.

Thank you for the opportunity to comment.

Lena Y. Bowie
Procurement Analyst
Acquisition Management Center, FCOC
Lena.Bowie@gsa.gov
(703) 308-4458

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 9**

[FAR Case 2002-010]

RIN: 9000-AJ48

**Federal Acquisition Regulation;
Debarment and Suspension—Order
Placement and Option Exercise**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to address the placement of orders against existing contracts with contractors that have been debarred, suspended, or proposed for debarment.

DATES: Interested parties should submit comments in writing on or before January 3, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-010@gsa.gov.

Please submit comments only and cite FAR case 2002-010 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAR case 2002-010.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises FAR 9.405-1(b) to require that discretionary actions on the part of the agency meet the same standards as agencies would have to meet in awarding new contracts. Therefore, for contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons

for doing so, ordering activities shall not place orders exceeding the guaranteed minimum under indefinite-quantity contracts; place orders against optional use Federal Supply Schedule contracts; or add new work, exercise options, or otherwise extend the duration of current contracts or orders.

In addition, minor editorial corrections are made in sections 9.405, 9.405-1, and 9.405-2. The various deletions of “or a designee” from the phrase “agency head or designee” does not signify a change in policy, but implements the FAR convention at FAR 1.108(b) that each authority is delegable unless specifically stated otherwise.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects orders placed by civilian agencies against existing indefinite quantity contracts with contractors debarred, suspended, or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002-010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: October 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 9 as set forth below:

**PART 9—CONTRACTOR
QUALIFICATIONS**

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 9.405 by revising paragraph (a); and removing from paragraphs (d)(2) and (d)(3) the words “or a designee”. The revised text reads as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (see 9.405-1(b), 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

* * * * *

3. Amend section 9.405-1 by removing from the first sentence of paragraph (a) the words “or a designee”; revising paragraph (b); and removing paragraph (c). The revised text reads as follows:

9.405-1 Continuation of current contracts.

* * * * *

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite-quantity contracts;

(2) Place orders against optional use Federal Supply Schedule contracts; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

9.405-2 [Amended]

4. Amend section 9.405-2 by removing from the first sentence of paragraph (a) the words “or a designee”.

[FR Doc. 02-27268 Filed 11-1-02; 8:45 am]

BILLING CODE 6820-EP-P



Federal Register

Monday,
November 4, 2002

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 9

Federal Acquisition Regulation;
Debarment and Suspension—Order
Placement and Option Exercise; Proposed
Rule